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 9 Attorneys for Plaintiffs,
 10 UMG RECORDINGS, INC.; CAPITOL
 11 RECORDS, INC.; BMG MUSIC;
 12 ATLANTIC RECORDING
 13 CORPORATION; ELEKTRA
 14 ENTERTAINMENT GROUP INC.; SONY

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

18 UMG RECORDINGS, INC., a Delaware
 19 corporation; CAPITOL RECORDS, INC., a
 20 Delaware corporation; BMG MUSIC, a New
 21 York general partnership; ATLANTIC
 22 RECORDING CORPORATION, a Delaware
 23 corporation; ELEKTRA ENTERTAINMENT
 24 GROUP INC., a Delaware corporation; SONY
 25 BMG MUSIC ENTERTAINMENT, a Delaware
 26 general partnership; and INTERSCOPE
 27 RECORDS, a California general partnership,

28
 Plaintiffs,

v.

Defendant.

CASE NO. 3:07-CV-04852-VRW

Honorable Vaughn R. Walker

**EX PARTE APPLICATION TO EXTEND
 TIME TO SERVE DEFENDANT AND
 [PROPOSED] ORDER**

1 Plaintiffs respectfully request, pursuant to the Federal Rules of Civil Procedure, Rules 4(m)
 2 and 6(b)(1)(A), that the Court grant an additional 90 days to serve Defendant with the Summons and
 3 Complaint. As further explained below, Plaintiffs believe Defendant is out of the country and thus
 4 have been unable to personally serve her with process. In support of their request, Plaintiffs state as
 5 follows:

6 1. Plaintiffs filed their initial Complaint for Copyright Infringement against a
 7 John Doe defendant on September 20, 2007. In order to obtain information sufficient to identify the
 8 Doe defendant, Plaintiffs also filed their *Ex Parte* Application for Leave to Take Immediate
 9 Discovery, seeking the Court's permission to serve a Rule 45 subpoena on Defendant's Internet
 10 Service Provider ("ISP"). On October 1, 2007, the Court issued its Order for Leave to Take
 11 Immediate Discovery, which was served on the ISP along with a Rule 45 subpoena. On November
 12 16, 2007, the ISP responded to Plaintiffs' subpoena, identifying the Defendant, Meiling Felicitas
 13 Johanna Wachholz-Yee.

14 2. After the ISP identified Ms. Wachholz-Yee, Plaintiffs sent her a letter
 15 notifying her of their claims for copyright infringement and encouraging her to make contact to
 16 attempt to amicably resolve this matter. Although settlement discussions later took place, the parties
 17 did not reach a settlement.

18 3. Accordingly, on February 11, 2008, Plaintiffs filed their First Amended
 19 Complaint naming Ms. Wachholz-Yee individually as Defendant.

21 4. Plaintiffs then engaged a process server and unsuccessfully attempted
 22 personal service on Defendant. However, Plaintiffs are informed and believe that Defendant has
 23 been residing in Germany, and is still residing there. Plaintiffs will therefore attempt alternate forms
 24 of service.

25 5. The current deadline for service of process is April 17, 2008. While this case
 26 was still in the Doe stage, the Court granted Plaintiffs' previous request for a 90-day extension of the
 27 service deadline by its Order of January 23, 2008. Given the circumstances of this case, Plaintiffs
 28 respectfully request an additional 90 days to effectuate service.

6. Plaintiffs submit that their initial efforts to contact Ms. Wachholz-Yee and resolve this case before naming her individually in the lawsuit, as well as their subsequent attempt to personally serve her with the First Amended Complaint, constitute good cause under Rule 4 for an extension of time for service. *See Gambino v. Village of Oakbrook*, 164 F.R.D. 271, 275 (M.D. Fla. 1995) (finding good cause to expand the time limit for service where plaintiff made a “reasonable effort” to serve defendant); *see also Matasareanu v. Williams*, 183 F.R.D. 242, 245-46 (C.D. Cal. 1998) (stating good cause standard for service extensions). In addition, unlike a traditional case where the defendant is known by name and service attempts can begin immediately after the complaint is filed, in this case Plaintiffs first had to obtain Defendant’s identity through the subpoena to the ISP. This Court has discretion to enlarge the time to serve even where there is no good cause shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

7. Because the copyright infringements here occurred in 2007, the three-year limitations period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no prejudice to Defendant from any delay in serving the Complaint.

8. Plaintiffs will provide Defendant with a copy of this request and any Order concerning this request when service of process occurs.

Dated: April 17, 2008

HOLME ROBERTS & OWEN LLP

By: /s/ Matthew Franklin Jaksa
MATTHEW FRANKLIN JAKSA
Attorney for Plaintiffs

1 **ORDER**

2 Good cause having been shown:

3 **IT IS ORDERED** that, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and
4 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to July 16,
5 2008.

6 Dated: April 22, 2008

